

## **REMARKS**

### **I. Introduction**

Claims 1, 2 and 4-11 are now pending in the present application after cancellation of claim 3. Claims 1, 2, 4, 5, 8, 10 and 11 have been amended. Claim 1 has been amended to incorporate the features previously contained in claim 3. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are in allowable condition.

### **II. Objections to Drawings & Claims**

The Examiner objected to the drawings because Figure 2 contains informalities (as indicated in the "Notice of Draftsperson's Patent Drawing Review"). In response, Figure 2 has been amended to render the numbers and reference characters plain and legible. An attached replacement drawing sheet is provided.

The Examiner objected to claim 11 because of an inconsistency in claimed subject matter with respect to the parent claim 9. In response, claim 11 has been amended to depend on claim 10.

### **III. Rejection of Claims 1 to 11 under § 102(b)**

Claims 1 to 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,330,870 ("Inoue"). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element, *arranged as in the claim*. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997).

Amended independent claim 1 recites, in relevant parts, a method for controlling a camshaft control device, . . . "the camshaft control device including a locking position, the method comprising: determining whether there is an adaptation of the camshaft to the crankshaft so that the phase angle of the camshaft with respect to the crankshaft may be determined; . . . wherein, when there is no release command and the adaptation has not occurred, the camshaft control device is activated so that the camshaft control device assumes

a predefinable reference position.” Amended independent claims 8 and 10 recite substantially similar features. As an example, amended claim 1 encompasses a method in which, when no adaptation of the camshaft to the crankshaft has occurred and the locking position is already released or not locked (e.g., due to improper shut down of the engine), the camshaft control device will move the camshaft into a predefinable reference position.

With respect to the claimed features that “the camshaft control device includ[es] a locking position, . . . [and] when there is no release command and the adaptation has not occurred, the camshaft control device is activated so that the camshaft control device assumes a predefinable reference position,” the Examiner contends that column 11, lines 6-11, and column 22, lines 4-25, of Inoue disclose these features. However, this cited sections of Inoue merely indicate the following: a) an intermediate lock position is set in a phase suited for the start; and b) if the coolant temperature is lower than the lower limit T1 or higher than the upper limit T2 of the predetermined temperature range, the target **camshaft phase is set in the vicinity of the lock position**. Inoue only discloses one **locking position**, and there is no teaching or suggestion of an additional **reference position**. Furthermore, with respect to the disclosure in column 22, lines 4-25 of Inoue, (i.e., if the coolant temperature is lower than the lower limit T1 or higher than the upper limit T2 of the predetermined temperature range, the target camshaft phase is set in the vicinity of the lock position), in this case the phase is already known and the adaptation of the camshaft to the crankshaft must be assumed to have been finished. Accordingly, Inoue does not actually teach or suggest how to control a camshaft when the adaptation has not occurred.

For at least the foregoing reasons, independent claims 1, 8 and 10, as well as their dependent claims 2, 4-7, 9 and 11, are allowable over Inoue. Withdrawal of the anticipation rejection of pending claims 1, 2 and 4-11 is respectfully requested.

**CONCLUSION**


In view of the above remarks, it is respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

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By:   
Richard L. Mayer  
Reg. No. 22,490  
One Broadway  
New York, NY 10004  
(212) 425-7200  
*p. no. 36,1971*

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**Amendments to the Drawings:**

The attached sheet of drawing includes changes to Figure 2. This sheet, which includes Fig. 2, replaces the original sheet including Fig. 2. In Fig. 2, numbers and reference characters have been rendered plain and legible, in compliance with comments contained in the “Notice of Draftsperson’s Patent Drawing Review” dated 12/8/04.

Attachment: replacement sheet